IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CASE No. 14 of 2001
In
COMPANY PETITION No. 206 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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O.L. OF MARUTI MARKETING LTD. - Complainant(s)
Versus
BHIKHABHAI ATMARAM PATEL & 2 - Accused

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Appearance :
OFFICIAL LIQUIDATOR for Complainant(s) : 1,MR.HIREN M MODI for Complainant(s) : 1,
MR SS PANESAR for Accused : 1 - 2.
NOTICE UNSERVED for Accused : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/12/2006

ORAL JUDGMENT

Present complaint has been filed by the Official Liquidator of Maruti Marketing Ltd. (in lqn.) under

section 454 of the Companies Act, 1956 (for short “the Act”) to punish the respondents accused i.e. ex-Directors of the company in liquidation for not filing the statement of affairs, as required to be filed within a stipulated time under section 454 of the Act.

2. It has been submitted in the complaint that by an order dated 19-12-2000 passed by this Court, M/s Maruti Marketing Limited was ordered to be wound up and the Official Liquidator attached to this Court was appointed as Official Liquidator of the company in liquidation. It is averred in the complaint that accused Nos.1 and 2 were the directors of the company as on the relevant date of winding up order i.e. 19-12-2000 as per the records maintained by the Registrar of Companies, Ahmedabad. It is further submitted that as per the provisions of section 454 of the Act, ex-Directors of the company were required and legally bound to file with the Official Liquidator as to statement of affairs of the company within 21 days from the date of winding up of order or such time, as may be extended by the Official Liquidator or High Court not exceeding three months. It is submitted that as the statement of affairs were not filed by the ex-Directors within the stipulated time, the complainant issued notice to the accused Nos.1 and 2 on 1-3-2001 and

the accused were called upon to submit the statement of affairs. However, it is further averred that none of the accused filed any statement of affairs with the Official Liquidator as required in terms of section 454(2) of the Act and the accused continue default without any reasonable lawful excuse. It is also further averred that the accused Nos.1 and 2 have also failed to hand over the books of account and other records of the company to the Official Liquidator. Under the circumstances, it is requested to punish the accused i.e. ex Directors of the company, as they have willfully and deliberately neglected to file the statement of affairs and have committed default under section 454(5) of the Act.

3. An affidavit is filed on behalf of the accused affirmed by the accused No.1 Bhikhabhai Atmaram Patel. It is submitted that after the service of the summons issued by this Court, he had entered appearance in the above proceedings on 4-2-2002 and thereafter, took the help of Chartered Accountant for calling the required information and particulars for filing of the statement of affairs and filed the said statement of affairs with the office of the Official Liquidator on 26-4-2002. In the above premise, it is requested that the delay caused in filing the statement of affairs may be excused. It is submitted

that there is no willful intention on his part for not submitting the required statement of affairs.

4. Shri Hiren Modi, learned advocate appearing on behalf of the Official Liquidator,- the complainant has submitted that there is a delay of 475 days in filing the statement of affairs. Relying upon the judgment in case of V.P. Singhal, Official Liquidator V. Chatrabhujdas Chimanlal & Another reported in 86 Company Cases, page 422, Official Liquidator, Trimurthy Agro-Chemical V. Niranjan Jayantilal Talia & others reported in 56 Company Case, page 380 and in case of Official Liquidator of Essen Computers Ltd. V. Rajendra A. Shah and others reported in 108 Company Case, page 559, it is requested to punish the accused i.e. ex Directors of the company in liquidation and to impose heavy penalty by further submitting that as per the old Act, per day Rs.100/- penalty is required to be imposed.

5. Shri Panesar, learned advocate appearing on behalf of the accused No.1 has orally submitted that initially notice dated 1-3-2001 by which the Official Liquidator called upon the accused to furnish the statement of affairs was not served. However, it is required to be noted that in the affidavit filed by the accused No.1

dated 23-12-2005, no such defence is taken and the said defence is only an afterthought which cannot be accepted. Shri Panesar has further submitted that as the statement of affairs have been filed on 24-2-2002, the delay may be excused and a liberal view may be given and instead of punishing the accused and to suffer imprisonment, only penalty be imposed of reasonable amount.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is not in dispute that the company was ordered to be wound up by order dated 19-12-2000 and the statement of affairs as required under section 454 of the Act were not submitted/filed by the ex Directors i.e. the accused Nos.1 and 2 herein. In spite of even the notice dated 1-3-2001, the statement of affairs were not filed and after the present complaint was filed and the accused Nos.1 and 2 appeared in pursuance of the summons issued by this Court, they appointed the Chartered Accountant and filed the statement of affairs on 24-2-2002. There is no explanation whatsoever for not filing the statement of affairs prior to 24-2-2002. There is a delay of 475 days in filing the statement of affairs. However, it appears that after the summons were served upon the accused, they

have immediately appointed the Chartered Accountant and filed the statement of affairs on 24-2-2002. Thus, conduct of the accused seems to be satisfactory. The punishment provided under section 454(5) of the Act is of two years or at the rate of Rs.100/- per day during which the petitioner continues or with both. In the present case, the petitioner's default continued at least from 1-3-2001 to 24-2-2002 and according to the Official Liquidator, - the complainant, there is a delay of 475 days in filing the statement of affairs. The fine for the entire period can be calculated at Rs.100/-per day, which runs into thousand of rupees. However, considering the over all picture and conduct of the accused, I do not think that too strict view needs to be taken.

8. For the reasons stated above, I convict the accused Nos.1 and 2 under subsection 5 of section 454 of the Act and direct the accused Nos.1 and 2 to pay a fine of Rs.15,000/- each and in default to suffer simple imprisonment for three months. The accused are directed to deposit penalty/fine before the Registry of this Court on or before 29th January, 2007.

9. This OJCR is accordingly disposed of. No costs.

(M.R.SHAH,J.)

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